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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,645	01/22/2002	Bernard A. Traversat	5181-82104	9627

7590 10/03/2005

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EXAMINER

LUU, LE HIEN

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,645

Applicant(s)

TRAVERSAT ET AL.

Examiner

Le H. Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01-22/02 - 07/07/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☒ Claim(s) 7, 19, 20 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/22/02-07/07/05</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-40 are presented for examination.
2. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. Claims 18-28 and 38-40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
 - a. "An article of manufacture comprising software instructions" is being considered as nonstatutory functional descriptive material. Applicant is suggested to amend the phrase above to be read as "An article of manufacture containing computer readable medium encoded with software instructions" to overcome the 35 U.S.C. 101 rejection.
 - b. "A carrier medium comprising program instructions" is being considered as nonstatutory functional descriptive material. Applicant is suggested to amend the phrase above to be read as "A computer readable medium encoded with program instructions" to overcome the 35 U.S.C. 101 rejection.

4. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

5. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

6. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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7. Claims 1-40 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61, 1-203, and 1-71 of copending Application Numbers 10/055,649, 10/055,641, and 10/055,741 respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claimed invention is the same as the context of the cited claims of the U.S. patent applications. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 7, 19-20, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claims 7, 19-20, and 22, "the physical location" lacks positive antecedent basis. Correction is required.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 1-6, 8-18, 21, and 23-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teodosiu et al (US Pub. No. 2002/0062375) and Badovinatz et al (US Patent 5,896,503).

12. Claim 1: Teodosiu teaches a peer computing system comprising:

a plurality of peer nodes (Fig 1, peers 140; page 2, paragraph [0030]); and wherein at least a subset of the peer nodes are configured to participate in a peer discovery protocol to discover other peer nodes (page 3, paragraphs [0035 - 0037]).

However, Teodosiu, fails to teach at least a subset of the peer nodes are configured to participate in a peer membership protocol for joining or forming a peer group with other peer nodes.

Badovinatz, teaches a membership protocol for adding nodes to become members of a domain in a distributed computing environment which inherently supports peer-to-peer computing (Figs 1-2, nodes 106s, domains 201A-201D; col. 2 line 30 – col. 3 line 42). It would be obvious to one of ordinary skill in the computer network art at the time of the invention to combine the teachings of Teodosiu and Badovinatz to allow peer nodes to use peer membership protocol for joining or forming a peer group with other peer nodes because it would manage membership of a domain of computers of a distributed computing environment.

13. Claim 2: Teodosiu teaches the peer computing system as claimed, wherein the member peer nodes in said peer group are configured to find and exchange content in said peer group (page 4, paragraph [0045]).

14. Claim 3. Teodosiu teaches the peer computing system as claimed, wherein said peer group is a collection of cooperating peer nodes that provide a common set of services in the peer computing system (page 2, paragraph [0016]; by definition a peer group is a group of peers communicating with each other and paragraph [0016] teaches accessing the same resource).

15. Claim 4: Teodosiu teaches the peer computing system as claimed, wherein the common set of services include one or more core services (FIG. 3; wherein the core services are services in the P2P platform).

16. Claim 5: Teodosiu and Badovinatz teach the peer computing system as claimed, wherein the core services include:

a discovery service configured for use by member peer nodes in said peer group to discover advertised resources in the peer computing system, wherein the resources include peers and peer groups, and wherein the discovery service uses the discovery protocol (page 4, paragraph [0053] Teodosiu; wherein the peer node has to advertise its presence and resources for the other peers to discover resources); and

a membership service configured for use by member peer nodes in said peer group to reject or accept group membership applications, wherein the membership service uses the membership protocol (col. 1 lines 40-67 Badovinatz).

17. Claim 6: Teodosiu teaches the peer computing system as claimed, wherein one or more peer nodes in said peer group are configured to participate in a peer resolver protocol configured for use in sending search queries from one peer group member to another peer group member (pages 7-8, paragraphs [0094 – 0097]).

18. Claim 8: Teodosiu teaches the peer computing system as claimed, wherein one or more peer nodes in said peer group are configured to participate in an endpoint routing protocol for enabling the peer nodes to request peer routing information to reach other peer nodes (page 3, paragraphs [0033 - 0037]; Teodosiu inherently teaches peer nodes can request peer routing information to locate resources).

19. Claim 9: Teodosiu teaches the peer computing system as claimed, wherein at least a subset of the peer nodes are configured to participate in a peer information protocol for enabling the peer nodes to learn about other peer nodes' capabilities and status (pages 2-3 and 6, paragraphs [0031 – 0032] and [0073]).

20. Claim 10: Teodosiu teaches the peer computing system as claimed, wherein each of the plurality of peer nodes is further configured to use an advertisement format

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for describing and publishing advertisements for resources in a peer-to-peer environment (FIG. 3 ref. 380 and paragraph [0073] & [0074]; wherein the passage teaches publishes resources and the resources have to be advertised in order for the other peers or group of peers to learn about the available resources).

21. Claim 11: Teodosiu teaches the peer computing system as claimed, wherein the resources include one or more of the peer nodes, peer groups, content, services, applications, pipes, and pipe endpoints (page 6, paragraph [0077]), wherein the pipes are communications channels between one or more of the peer nodes, the services, and the applications in the peer-to-peer environment, and wherein the pipe endpoints are network interfaces on the peer nodes that are configured to be bound to the pipes to establish the communications channels (FIG. 3).

22. Claims 12-18, 21, and 23-40 have similar limitations as to claims 1-6 and 8-11; therefore, they are being rejected under the same rationale as claims 1-6, and 8-11.

23. Claims 7, 19-20, and 22 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112 and to include all of the limitations of the base claim and any intervening claims.

24. In the remarks, applicant argued in substance that

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(A) The rejection is improper because the Examiner has not shown that Teodosiu qualifies as a prior art reference unless at least one claim of the published utility application is supported in the provisional application.

As to point (A), pages 3-4 of Teodosiu's Provisional Application No. 60/252,658 teach limitations of claim 1 of Teodosiu's Patent Application No. 09/952,652 or Pub. No. 2002/0062375. In addition, the declaration of Teodosiu's Patent Application No. 09/952,652 claims the benefits of Provisional Applications 60/252,658 and 60/252,659 both filed on 11/22/2000.

(B) There is no motivation to combine the teachings of Teodosiu and Badovinat. z.

As to point (B), Examiner states that Teodosiu, fails to teach at least a subset of the peer nodes are configured to participate in a peer membership protocol for joining or forming a peer group with other peer nodes. Badovinat. z, teaches a membership protocol for adding nodes to become members of a domain in a distributed computing environment which inherently supports peer-to-peer computing (Figs 1-2, nodes 106s, domains 201A-201D; col. 2 line 30 – col. 3 line 42). It would be obvious to one of ordinary skill in the computer network art at the time of the invention to combine the teachings of Teodosiu and Badovinat. z to allow peer nodes to use peer membership protocol for joining or forming a peer group with other peer nodes because it would manage membership of a domain of computers of a distributed computing environment. The motivation is from Badovinat. z's col. 1 lines 5-8.

(C) Prior art does not teach one or more peer nodes in said peer group are configured to participate in a peer resolver protocol.

As to point (C), Teodosiu teaches peer nodes can cache the realm name. Teodosiu teaches gate server instructs peer nodes to use its own resource locator service to access the resource in addition to gate sever can resolve resource addresses (pages 7-8, paragraphs [0094 – 0097]).

(D) Prior art does not teach peer nodes to request peer routing information to reach other peer nodes.

As to point (D), Teodosiu teaches peer nodes can test network paths to RNS servers to identify network topology and best response times. Therefore, Teodosiu inherently teaches peer nodes can request peer routing information to other peer nodes (page 3, paragraphs [0033 – 0037]).

(E) Prior art does not teach peer nodes are configured to participate in a peer information protocol for enabling the peer nodes to learn about other peer nodes' capabilities and status.

As to point (E), Teodosiu teaches peer nodes can identify peer resources within its realm. Moreover, peer platform can publish peer resources by placing the resources in publication directory (pages 2-3 and 6, paragraphs [0031 – 0032] and [0073]).

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25. Applicant's arguments filed on 07/07/05 have been fully considered but they are not deemed to be persuasive except arguments for claims 7, 19-20, and 22.

26. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

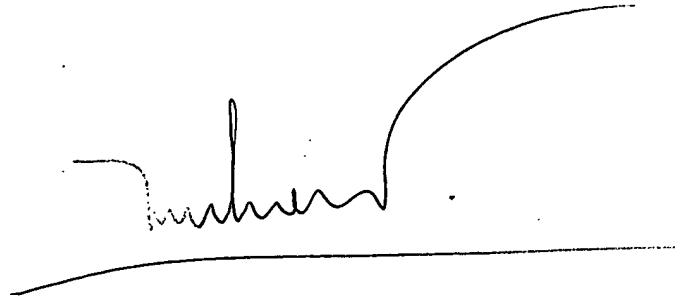
27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu whose telephone number is 571-272-3884. The examiner can normally be reached on 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Le Hien Luu', is written above a horizontal line. The signature is stylized with a large, sweeping flourish on the right side.

LE HIEN LUU
PRIMARY EXAMINER